

2/17/64

Memorandum 64-15

Subject: Study No. 34(L) - Uniform Rules of Evidence (Article I. General Provisions)

In preparing revised drafts of our printed tentative recommendations in statutory form, it would be desirable to have certain general definitions that will apply to the entire new evidence statute. For example, in reviewing the tentative recommendation on the Hearsay Evidence Article, the need for some general definitions becomes apparent. This memorandum contains certain suggested definitions to be included in the general definitions contained in Rule 1. No attempt is being made at this time to determine all the definitions that should be included in Rule 1; such an attempt will be made at the time we consider the existing statutes not affected by the Uniform Rules.

The following definitions should be added to Rule 1:

Definitions of "action," "civil action," and "criminal action."

"Action" includes a civil action and a criminal action.

"Civil action" means a civil action or proceeding.

"Criminal action" means a criminal action or proceeding.

The use of the three definitions set out above will simplify the drafting of the new statute. The tentative recommendations use the phrase "action or proceeding" and "criminal action or proceeding" and "civil action or proceeding."

In connection with these definitions, it is noted that Section 2035 of the Code of Civil Procedure (part of the Discovery Statute) provides:

2035. The word "action" as used in this article is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

Section 1881 of the Code of Civil Procedure (the Privileges Section) uses the phrases "civil action or proceeding" and "criminal action or proceeding" without further definition. Other sections of the Code of Civil Procedure use similar language without further definition: E.g., C.C.P. §§ 1936.1 ("criminal proceedings"); 1952, 1952.1, 2055 ("civil action or proceeding"); 1980.3, 2053 ("civil action"); 1980.7, 2061 ("criminal cases"); 1953.01, 1953.03, 1983 ("actions or proceedings, civil or criminal"). The Penal Code sometimes uses the phrase "criminal action or proceedings." E.g., Penal Code §§ 690, 1053, 1269a; 1127b ("criminal trial or proceeding"); 1127c ("criminal trial or proceeding"); 1202b ("criminal proceeding"); 1247k ("criminal case").

It should be noted that these definitions would apply, "unless the context otherwise requires." See introductory clause of Revised Rule 1.

Definitions of "public entity," "public employee," and "State."

"Public entity" includes the State, a county, city, district, public authority, public agency, and any other political subdivision or public corporation.

[Definition based on Government Code Sec. 811.2 but does not list "The Regents of the University of California" and is not by its terms limited to a public entity in California.]

"Public employee" means an officer or employee of a public entity.

"State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

[Definition same as Government Code Sec. 18.]

The definitions are suggested because the defined terms are used in various provisions throughout the Uniform Rules. In a particular rule, the rule

will be phrased to make it clear whether the defined term is restricted to public entities in California. Approval of these definitions will simplify the comprehensive evidence statute and will eliminate inconsistencies that might otherwise exist.

Respectfully submitted,

John H. DeMouilly,
Executive Secretary